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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1990

PALOMAR MOBILEHOME PARK ASSOCIATION,
A Limited Partnership,
Petitioner,

vs.

THE CITY OF SAN MARCOS,
Respondent.

On Petition for a Writ of Certiorari To The Fourth Appellate District, Division One, Court of Appeal For The State of California

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the state court was correct in ruling that the City of San Marcos' Mobilehome Rent Review Ordinance did not constitute a federal taking even though it restricts a park owner's ability to increase space rent whenever a mobilehome is transferred from one homeowner to another.

2. Whether the state court was correct in ruling that the City of San Marcos' Mobilehome Rent Review Ordinance is not a violation of federal substantive due process even though it restricts a park owner's ability to increase space rent whenever a mobilehome is transferred from one homeowner to another.

LIST OF PARTIES

The parties to the proceeding below were the Petitioner, Palomar Mobilehome Park Association, a limited partnership and Respondent, City of San Marcos.

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To The Fourth Appellate District,
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For The State of California

RESPONDENT'S BRIEF IN OPPOSITION

Respondent City of San Marcos ("City") respectfully requests that this Court deny Palomar Mobilehome Park Association's ("Palomar") Petition for Writ of Certiorari ("Petition") seeking review of the California Court of Appeal opinion in this case. In the alternative, because the state court was so clearly correct in ruling that the San Marcos Rent Review Ordinance does not effect a federal taking nor violate federal substantive due process, the City respectfully suggests that the Supreme Court grant certiorari to clarify the taking issue and summarily affirm the judgment below; thereby resolving a matter of significant legal interest.

OPINIONS BELOW

On December 7, 1989, the California state trial court (San Diego Superior Court, Case No. N45074) issued its Order granting the City's Demurrer and Dismissing Palomar's Action. A copy of that Order appears in Appendix C to Palomar's Petition at C25-C27.

On February 6, 1991, the California Court of Appeal (Fourth Appellate District, Division One, Case No. D011484) issued its opinion affirming the Judgment of Dismissal. The opinion was not certified for publication, but appears in Appendix A to Palomar's Petition at A1-A23.

On April 17, 1991, the California Supreme Court (Case No. S019940) issued its one page ruling denying Palomar's Petition for Review and denying a request for an order directing that the Court of Appeal decision be published. The California Supreme Court ruling appears in Appendix B to Palomar's Petition at B24.

JURISDICTION

The Opinion of the California Court of Appeal, Fourth Appellate District, Division One, was entered February 6, 1991. On April 17, 1991 the California Supreme Court denied Palomar's Petition for Review. Palomar's Petition for Certiorari was docketed with the United States Supreme Court on or about May 28, 1991. The jurisdiction of the United States Supreme Court was invoked under 28 U.S.C. Section 1257.[1]

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[1]Although Palomar purported to invoke the Supreme Court's jurisdiction under 28 U.S.C. Section 1257 (federal question jurisdiction) (Petition at 4) at other places in its Petition Palomar seems to be trying to cast doubt on whether the federal questions had really been properly presented to the state courts. See, e.g., Petition at 26-39. As explained *infra*, page 9 at note 10, it is likely that Palomar is making this latter argument to avoid the res judicata/collateral estoppel effect of the state court's decision on its federal claims.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.

The California Constitution, Article I, Sec. 19, provides in pertinent part:

> Private property may be taken or damaged for public use only when just compensation, . . . has first been paid to, or into court for, the owner.

The California Mobilehome Residency Law (Cal. Civ. Code, Section 798 et seq.) governs many aspects of the relationship between a mobilehome park owner and a mobilehome owner residing on a rented space in a mobilehome park. Civil Code Section 798.55(a) contains legislative justification for the unique protections provided mobilehome owners. Protections include restrictions on terminating a space tenancy (e.g., Civil Code, Sections, 798.55(b), 798.56) and restrictions preventing a park owner, from interfering with or preventing a homeowner from selling his home to a new purchaser as long as the prospective homeowner has the financial ability to pay the space rent and does not have a prior history indicating that he or she will not comply with the rules and regulations of the park. (E.g., Civil Code, Section 798.74).

[California Civil Code, Sections 798.55, 798.56, 798.56(a), and 798.74 are set forth in Appendix D to Palomar's Petition at D28-D47.]

The San Marcos Municipal Code ("SMC"), Chapter 16.16. of Title 16 provides for review of space rental increases for mobilehome parks located within its jurisdiction. SMC, Section 16.16.010 sets forth the legislative

findings which justified enactment of the Ordinance. SMC, Section 16.16.055 provides that prior to increasing space rent, a park owner must notify both the City and homeowners. Rent review is initiated by the homeowners filing a petition signed by at least one homeowner from each of the more than 50% of the spaces in the park, SMC, Section 16.16.060(a). The filing of an adequate petition automatically stays the rent increase until the Mobilehome Rent Review Commission makes its decision, SMC, Section 16.16.060(d). At the rent review hearing, the park owner has the burden of proving by a preponderance of the evidence that the increase is reasonable and necessary to enable the park owner to receive a just and fair return on the owner's investment. SMC, Section 16.16.070(g). Pursuant to SMC, Section 16.16.080, all space rents are to be adjusted at the same time and not more than once a year.

[Pertinent portions of SMC sections 16.16.010, 16.16.055, 16.16.060, 16.16.070 and 16.16.080 are set forth in the Appendix to this Opposition at A1-A3.]

STATEMENT OF THE CASE

A. Background

The City of San Marcos is located in Northern San Diego County in the State of California. It has a substantial number of mobilehome parks and mobilehome owners located within its boundaries.[2]

In April 1978, the City Council of the City of San Marcos enacted Ordinance 78-462 establishing a

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[2]The October 19, 1990 report by the California Department of Housing and Community Development listed 14 mobilehome parks and 2,723 mobilehome spaces in San Marcos. The March 27, 1990 County of San Diego "County Wide Mobilehome Task Force Final Report" found that 80% of the mobilehome spaces in the County were occupied by "senior households" who are "generally small elderly families with fixed incomes." *Id.* at 5.

Mobilehome Rent Review Commission to review proposed mobilehome space rent increases.[3] Although over the years there have been several amendments,[4] the Rent Review Ordinance ("Ordinance") has continued in force to the present date.

In November 1986, San Marcos annexed the Palomar Mobilehome Parks into the City of San Marcos.[5] As a result they became subject to the provisions of the Ordinance.

Until early 1989, the Ordinance and particularly SMC section 16.16.080 (see Appendix to this Opposition at A3) had been interpreted as *not* prohibiting a park owner from increasing the space rent when a mobilehome was transferred to a new homeowner. However, in February 1989, the City formally clarified its interpretation of that provision to strictly apply the park-wide one time per year adjustment restriction, thus, mandating continuation of existing space rent to a new resident subject, of course, to the park owner's ability to seek an annual increase pursuant to the provisions of the Ordinance.[6]

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[3]The Ordinance found that the shortage of mobilehome spaces, the low vacancy rates in mobilehome parks, and the cost and difficulty of relocating mobilehomes had created a great imbalance in the bargaining position of park owners and homeowners in favor of the park owners. See, SMC Section 16.16.010, Appendix to this Opposition at A-1.

[4]The application of an earlier version of this Ordinance was reviewed and upheld by the state Court of Appeal in *San Marcos Mobilehome Park Owners Ass'n. v. City of San Marcos,* 192 Cal.App.3d 1492, 238 Cal.Rptr. 290 (1987).

[5]Petitioner Palomar owns and operates two adjacent mobilehome parks, Palomar Estates East, a 371 space park, and Palomar Estates West, a 472 space park.

[6]In September 1990, after Palomar's suit had been dismissed at the state trial court level, the City enacted Ordinance 90-862 which added SMC section 16.16.085(c) providing that on a sale, a park owner may increase space rents based on the lower of the percentage change in

B. Procedural History

1. The State Superior Court Ruling.

On September 14, 1989, Palomar filed a Complaint in the San Diego Superior Court seeking injunctive and declaratory relief alleging that the Ordinance was unconstitutional because it did not permit a park owner to automatically increase rents when a mobilehome was sold or transferred. In addition, the Complaint sought $45,000,000 in money damages for the alleged taking of the park owner's property. Relying on *Hall v. City of Santa Barbara*, 833 F.2d 1270 (9th Cir. 1986), *cert denied*, 485 U.S. 940, 108 S.Ct. 1120, 99 L.Ed.2d 281 (1988), Palomar alleged that the Ordinance constituted a "taking" under state and federal law because allegedly it permitted residents to obtain a higher price (premium) on the sale of their mobilehome in a rent controlled park as compared with the price similar homes sold in a non-rent controlled park. Palomar further contended that the Ordinance was "irrational" because it allegedly allowed the residents to sell their mobilehomes for a "premium" thereby increasing the sales prices to the detriment of low cost and affordable housing.

City responded by demurring both generally and specially and moving to strike portions of the Complaint. On December 7, 1989, the Honorable Robert J. O'Neill, Judge of the San Diego Superior Court issued an Order sustaining the City's Demurrer to the Complaint, without

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the CPI since the last rent increase or the median rent levels for comparable spaces in the park, all subject to a maximum rental increase of 10%. The Ordinance further provided that if the park owner is dissatisfied with the increase, the owner may request that the fair market rent for the space be established by arbitration. See, Appendix to this Opposition at A4-A7.

In light of the enactment of Ordinance 90-862, it is arguable that Palomar's claims for injunctive and declaratory relief are moot and Palomar's claims for alleged damages, if not also mooted, have been severely limited.

leave to amend, finding that Hall was neither binding nor persuasive to establish a "per se" taking[7] and that Palomar did not and could not allege deprivation of all use of its property to establish a regulatory taking. On its own motion, the Court dismissed the entire action with prejudice.[8] See, Order, Appendix C to Palomar's Petition at C25-C27.

2. The State Court of Appeal Ruling.

On January 8, 1990, Palomar timely filed its Notice of Appeal with the State Court of Appeal. Following briefing, oral argument was waived and the matter was taken under submission.

On February 6, 1991, in an unpublished decision (*Palomar Mobilehome Park Ass'n. v. City of San Marcos,* 4th Dist. Div. One, No. D011484 (see, *Palomar* Slip. Op., Appendix A to Palomar's Petition at A1-A23); the Court of Appeal noting that the same "taking" arguments had recently been rejected in *Yee v. City of Escondido,* 224 Cal.App.3d 1349, 274 Cal.Rptr. 551 (1990) [*pet. for review denied,* 1991 Cal. LEXIS 353, January 24, 1991], and *Peppard v. City of Carpinteria,* [temporarily reported at 226 Cal.App.3d 812, 278 Cal.Rptr. 100 (1991)][9] (*Palomar* Slip. Op., Palomar's Petition at A-8) once again reaffirmed the conclusions it had reached in *Oceanside Mobilehome Park Ass'n. v. City of Oceanside,* 157 Cal.App.3d 887, 906-907, 204 Cal.Rptr. 239 (1984), that an increase in the value of mobilehomes where rent

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[7]Palomar had not alleged that it had requested a rent increase and had been denied a just and reasonable return on its investment.

[8]The Court also ruled that under the circumstances, the City's special demurrers and motion to strike were moot.

[9]On March 21, 1991, the California Supreme Court denied a Petition for Review in *Peppard* and ordered the Court of Appeal opinion depublished. See, *Peppard v. City of Carpinteria,* 1991 Cal. LEXIS 1293 (1991).

control has been imposed does not constitute a "taking" of property from the park owner. *Palomar* Slip. Op., Palomar's Petition at A10-A11.

The Court pointed out that "[a]bsent a contention it is precluded from charging sufficient rent to obtain a reasonable return from its investment, Palomar's claim that the vacancy control allows the tenant to extract a 'premium' from the sale of his mobilehome is irrelevant to the taking issue presented here." *Id.* at A10-A11.

The Court then examined *Hall, supra,* and *Pinewood Estates v. Barnegat Township Leveling Bd.* 898 F.2d 347 (3rd Cir. 1990), found them unpersuasive and their reliance on *Loretto v. Teleprompter Manhatten CATV Corp.*, 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982), misplaced and superseded by a subsequent United States Supreme Court decision, *FCC v. Florida Power Corp.*, 480 U.S. 245, 107 S.Ct. 1107, 94 L.Ed.2d 282 (1987). *Palomar* Slip. Op., Palomar's Petition at A11-A20.

The Court also examined Palomar's substantive due process claims and concluded:

> Palomar's allegations do not dispute that the vacancy control protects the purchasing tenant from excessive rent, which is a legitimate state interest, and which interest is not defeated by the alleged fact of an increase in the cost of the coach. Since there is no contention the vacancy control does not reasonably relate to the legitimate interest of preventing excessive rents, any challenge to the wisdom of the measure based on the cost of the coaches is a policy question for the Legislature, not the courts.

Id. at A-22.

3. The California Supreme Court's Denial of Review.

On March 11, 1991, Palomar filed a Petition for Review with the California Supreme Court. On April 17, 1991, the California Supreme Court denied Palomar's request for Review.[10] See Ruling, Appendix B to Palomar's Petition at B24.

WHY THIS WRIT SHOULD BE DENIED OR IF GRANTED WHY THE JUDGMENT BELOW SHOULD BE AFFIRMED

I. THE COURT BELOW FULLY CONSIDERED AND CORRECTLY DECIDED PALOMAR'S TAKING CLAIM

Palomar apparently bases its argument for granting this Writ of Certiorari on United States Supreme Court

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[10]On February 2, 1991, Palomar filed a Complaint in the United States District Court for the Southern District of California. *Palomar Mobilehome Park Ass'n. v. City of San Marcos,* S.D. Cal., No. 91-0157 B (IEG). In its federal suit, Palomar raised essentially the same claims it had raised in the state suit contending that the City's Ordinance was both a public and private "taking" and violative of substantive due process under the Fifth and Fourteenth Amendments and 42 U.S.C. Section 1983 and Section 1985. The City responded with a motion to dismiss under F.R.C.P. Rules 12(b)(1) and (6) for lack of jurisdiction and for failure to state a claim primarily arguing that the federal suit was barred by res judicata/collateral estoppel based on the state court rulings on the same claims.

On June 6, 1991, the Honorable Rudi Brewster, United States District Judge, issued a Judgment of Dismissal. Judge Brewster found that Palomar's federal constitutional issues had been fully litigated and that the state court ruling was a valid final judgment on the merits. After noting that federal district courts are courts of original not appellate jurisdiction, the Court concluded that the proper forum for review of the state court judgment was the United States Supreme Court not the United States District Court, citing *Rooker v. Feldman* 263 U.S. 413, 415-416, 44 S.Ct. 149, 68 L.Ed.2d 362

Rule 10(b) contending that the Palomar state court decision conflicts with two federal appellate court decisions, *Hall, supra,* and *Pinewood, supra.* In fact, the Court below fully considered both decisions and found them distinguishable and against the weight of authority as set forth in subsequent federal and state court rulings.

A. The Hall Rationale Has Been Undermined By Subsequent Cases.

1. The Hall Ninth Circuit Panel Decision.

In August 1984, the City of Santa Barbara enacted a mobilehome rent control ordinance. One of the key provisions required "mobile park operators to offer their tenants leases of unlimited duration." 833 F.2d at 1273. The Halls filed suit in federal district court claiming that by giving the tenants such a "perpetual lease" at a below market rental rate, the ordinance transferred to the tenants a possessory interest in the Halls' land. They alleged the prices of the mobilehomes increased after enactment of the ordinance and that this increase reflected a "taking" from the park owner. 833 F.2d at 1274. After reviewing those allegations, the District Court granted the City's Motion to Dismiss. *Ibid.*

On appeal, a Ninth Circuit panel reversed. After discussing both "regulatory taking cases" (e.g., *Penn Central Transportation Co. v. New York City,* 438 U.S. 104, 98 S.Ct.

(1923) and *District Court of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 484-485, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983).

Much of Palomar's effort on this Petition (e.g., "Questions Presented," Nos. 3 and 4 (Petition ii); "Argument", "The federal claim did not even exist at the time the state court purported to dispose of it" (Petition 26-39); and "Conclusion", "to remand to the owner court with instructions to limit its decision to state constitutional issues," (Petition 44)) is apparently designed to circumvent such a federal district court res judicata ruling. Before receiving what it now considers an adverse ruling from the state courts, Palomar made no attempt to reserve its federal claims from state court adjudication.

2646, 57 L.Ed.2d 631 (1978), *reh. den.*, 439 U.S. 883, 99 S.Ct. 226, 58 L.Ed.2d 198 (1978), and "physical occupation cases" (e.g., *Loretto v. Teleprompter Manhattan CATV Corp., supra*, the panel concluded "when viewed in the light most favorable to the Halls" the allegations seemed to present a claim for taking by physical occupation. 833 F.2d at 1276. Pointing out that the ordinance directed the landlord to give the tenant an indefinite lease, the panel concluded "[t]he right to occupy property in perpetuity is surely the type of property that is protected by the taking clause." *Ibid.*

After pointing out that the Santa Barbara Ordinance had apparently been enacted solely to alleviate "a critical shortage of low and moderate housing," the panel also indicated that it had significant doubts that the Ordinance was rationally related to that end. 833 F.2d at 1280-81.[11]

[It is unfortunate that at the time the *Hall* panel made its decision it was apparently unaware of the discussion of similar claims in *Oceanside, supra,* 157 Cal.App.3d at 906-907. There, the Court in upholding the Oceanside Mobilehome Rent Review Ordinance specifically dismissed an argument that the combined effect of Mobilehome Residency Law and the local ordinance constituted a taking merely because "a selling tenant with a favorable rent controlled lease may be able to sell the onsite mobilehome for a higher price than can be obtained for the identical mobilehome situated in an unregulated park." *Ibid.* Had the Ninth Circuit been aware that *Oceanside* had previously considered and decided the same claim, it may have ruled quite differently.][12]

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[11]The panel also indicated their feelings toward rent control in general by questioning its overall rationality. See, 833 F.2d at 1281n.26.

[12]For example, the *Hall* panel described the Halls' claim as being "novel." 833 F.2d at 1273. Later after examining several rent control

2. The Dissent From Denial Of Rehearing.

The *Hall* panel denied a petition for rehearing. 833 F.2d at 1281. A suggestion for rehearing en banc was also rejected, with three Circuit Judges dissenting. *Ibid.* The three dissenters correctly treated the rent control ordinance as an economic regulation and pointed out that the ordinance was similar to three rent control cases that the Supreme Court had dismissed as lacking a substantial federal question[13] and concluded *"The panel decision is thus contrary to controlling authority."* 833 F.2d at 1282 [emphasis added].

The three dissenters pointed out that the panel's rationality argument was flawed and that, because a Court does not have the power to sit as a "superlegislature," legislation passes constitutional muster if the legislature could have concluded that its action would promote a legitimate state interest. 833 F.2d at 1284.[14]

The City of Santa Barbara's Petition for a Writ of Certiorari was denied. See, 485 U.S. 940, 108 S.Ct. 1120, 99 L.Ed.2d 281 (1988).

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cases, the panel stated: "In none of the cited cases has the landlord claimed that the tenant's right to possess the property at reduced rental rates was transferrable to others, that it had a market value, that it was in fact traded on the open market and that tenants were reaping a monetary windfall by selling this right to others." 833 F.2d at 1278.

[13]See, *Fisher v. City of Berkeley*, 471 U.S. 1124, 105 S.Ct. 2653, 86 L.Ed.2d 270 (1985); *Nash v. City of Santa Monica*, 470 U.S. 1046, 105 S.Ct. 1740, 84 L.Ed.2d 807 (1985); *Fresh Pond Shopping Center v. Callahan*, 464 U.S. 875, 104 S.Ct. 218, 78 L.Ed.2d 215 (1983).

[14]The Dissenters also correctly predicted that the Hall panel decision ". . . is an authorization for broad, wholesale attacks upon rent control regulation. It casts a shadow upon all economic regulation. Our court must now sit idly by and watch taxpayer's money and court time being expended in litigation over the effects of this decision." 833 F.2d at 1284.

3. FCC Undermined The *Hall* Rationale By Finding No Taking Where A Property Owner Had Voluntarily Entered Into A Lease Subject To Rent Regulation.

Subsequent to the *Hall* panel's decision, the Supreme Court decided *FCC v. Florida Power Corp.*, 480 U.S. 245, 107 S.Ct. 1107, 94 L.Ed.2d 282 (1987). There, this Court dismissed a utility's argument that a federal statute which authorized the FCC to determine the rates which it could charge a cable TV system for the use of its poles constituted a "taking." The Court pointed out that the statute did not require the utility to rent its poles but merely regulated the rents charged once it had decided to rent. 480 U.S. at 251. The Court noted that unlike *Loretto, supra,* the public utility landlords had *voluntarily* entered into the leases with cable company tenants stating:

> [I]t is the invitation, not the rent which makes the difference. The line which separates these cases from *Loretto* is the unambiguous distinction between a commercial lessee and an interloper with a government lease.

Id. at 252-253.

The Court after also reiterating that, "statutes regulating the economic relations of landlord and tenants are not *per se* takings," dismissed the contention that the rent regulation was a taking. *Ibid.*

4. Pennell Rejected *Hall's* Rationale And Upheld The Rationality Of A Rent Control Ordinance Which Considered Tenant Hardship.

In *Pennell v. City of San Jose,* 485 U.S. 1, 108 S.Ct. 849, 99 L.Ed.2d 1 (1988), this Court in upholding San Jose's rent control ordinance, not only refused to declare rent

control a "per se" taking[15] (see (see, 485 U.S. at 12n.6), but also rejected the landlord's due process argument that the only legitimate purpose of the statute was to prevent rent increases caused by housing shortages and that the objective of alleviating individual tenant hardship was not a policy that the legislature was free to adopt in a rent control ordinance. 485 U.S. at 12.

The Court pointed out that "a legitimate and rational goal of rate regulation is the protection of consumer welfare", and the consideration of tenant hardship as a factor to be considered in determining rent increases "represents a rational attempt to accommodate the conflicting interests of adjudicating tenants from burdensome rent increases while at the same time ensuring that landlords are guaranteed a fair return on their investment." 485 U.S. at 13.

5. Eamiello And Thompson Rejected The *Hall* Rationale And Upheld The Rationality Of A Statute Designed To Protect The Economic Interest Of Mobilehome Owners In Selling Their Homes On Site.

Eamiello v. Liberty Mobile Home Sales, 208 Conn. 620, 546 A.2d 805 (1988), *app. dism.*, 489 U.S. 1002, 109 S.Ct. 1104, 103 L.Ed.2d 169 (1989), also examined the *Hall* rationale and rejected its reasoning. There, the park owner, relying upon *Hall*, argued that a state statute which permitted a homeowner to sell his mobilehome on site was unconstitutional and constituted a "taking." 546 A.2d 815. The Connecticut Court after reviewing *Hall* declined to apply its rationale. 546 A.2d 816. It concluded that the statutory restrictions on the right of the park owner to control the term of the lease and the identity of

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[15]The Amici Briefs (available on LEXIS) urging such action relied in great part on the *Hall* panel dicta (see, e.g., 833 F.2d at 1281n.26) that rent control should be considered a "per se" taking.

the lessee was not sufficiently analogous to a physical occupation of the property to violate the federal "takings" clause. Second, it determined that there were significant differences between the Connecticut mobilehome statute[16] and the Santa Barbara Ordinance. *Ibid.* The Court after reviewing *Loretto*, *FCC*, and *Fresh Pond*, distinguished *Loretto*, pointing out that a mobilehome owner's right to occupy a mobilehome space was originally obtained "consensually" indicating that in entering into such a lease the park owner has transferred his "possessory interest" in the land to the homeowner in return for rents.[17] *Id.* at 818.

After noting that often, due to restrictive zoning, park owners have a "monopoly" (*Id.* at 819), the Court continued and pointed out mobilehome owners had a substantial investment in their homes[18] and allowing an on-site sale "serves a substantial public purpose in protecting the

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[16]While Connecticut General Statute Section 21-79 is not a rent control statute, it does provide a form of "vacancy control." It concludes with the following words: "No owner shall exact a commission or fee with respect to the price realized by the seller, unless he has acted as agent for the seller on a sale pursuant to a written contract, *or charge a rent for the mobile manufactured home space or lot upon which the purchased mobile manufactured home is located greater than the prevailing rate for any other space or lot located in the park.*" [emphasis added]

The first clause is similar to Cal. Civil Code Section 798.72 (Park owner cannot charge a *fee* to either a homeowner or prospective homeowner on change of ownership unless he performed a service). The second clause is similar to the San Marcos Ordinance in that it puts limits on the right of park owners to raise *rents* upon vacancy.

[17]The Court concluded that the restrictions put on the park owner's right to reject a transferee were quite similar to the common provision that a landlord may not unreasonably withhold his consent to the assignment of a lease by a tenant. See, 546 A.2d at 818.

[18]*Manheim*, "Tenant Eviction and the Taking Clause," 1989 Wisc.L.Rev. 925, 956n.179, notes that modern mobilehomes often cost between $30,000 and $75,000.

economic interests of mobilehome tenants in selling their homes on site." *Id.* at 819. After noting that there, the homeowner's home had been purchased for $12,500, and was worth $17,000 if sold on site but only $3,500 if it had to be moved, the Court concluded that the statute "protects tenants at mobilehome parks from being forced to sell to park owners at a substantial loss and as a consequence benefits many low income people who cannot otherwise afford to purchase a more expensive home." *Ibid.*

The Court recognized that the state statute which restricted rent increases on transfer might result in the homeowner receiving a greater price for his home because of the statutory right of the purchaser to continue occupancy of the site, but, nevertheless, upheld the statute concluding that because the state had created the site value through regulatory scarcity (e.g., zoning) it could constitutionally repose any sales premium in the homeowner rather than the park owner. *Id.* at 820.

The Court concluded:

> In choosing the tenant rather than the mobile home park operator as the recipient of this economic advantage arising form the near-monopoly status of the industry, the legislature, by allocating its benefit to those who generally are more in need, has not violated any constitutional principle. In our view, Section 21-79 strikes a reasonably fair balance between the economic interests of mobile home tenants and those of mobile home park operators.

Ibid.

In *Thompson v. Merlino Enterprises*, 208 Conn. 656, 545 A.2d 1094 (1988), *app. dism.*, 488 U.S. 1024, 109 S.Ct. 829, 102 L.Ed.2d 962 (1989), the Connecticut Court relying on *Eamiello, supra*, upheld the right of an administrator of an estate to sell a mobilehome on site recogniz-

ing that the home had a value of $11,000 if sold on site and almost no value if sold off site. See, 545 A.2d at 1097.

6. *Sperry* Indicates That A Mere Loss Of Money Is Not A Physical Taking.

More recently, in *United States v. Sperry Corp.*, 493 U.S. 52, 110 S.Ct. 387, 107 L.Ed.2d 290 (1989), this Court held that a statute which required American claimants to pay the United States a percentage of the monetary rewards made by the Iran-United States Claims Tribunal was neither a "taking" nor a violation of the due process clause. In so doing, this Court, reversed the Court of Appeals which held that the payment was a "permanent physical occupation" of property and therefore a "per se taking" under *Loretto, supra,* stating:

> It is artificial to view deductions of a percentage of a monetary award as physical appropriations of property. Unlike real or personal property, money is fungible. No special constitutional importance attaches to the fact that the Government deducted its charge directly from the award rather than requiring Sperry to pay it separately. If the deduction in this case was a physical occupation requiring just compensation, so would be any fee for services, including a filing fee that must be paid in advance. Such a rule would be an extravagant extension of *Loretto.*

110 S.Ct. at 395n.9.

Here, as in *Sperry,* and unlike *Loretto,* there is no new physical property that is being occupied due to the ordinance. As in *Sperry,* the only difference is that without the ordinance, the park owner might have been able to obtain more money or profit.[19]

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[19]See, Note, "The Constitutionality of Rent Control Restrictions on Property Owner's Dominion Interests", 100 Harv. L. Rev. 1067, 1084n.106 (1987) (Note concludes there was no indication that the ordinance in *Hall* frustrated any interest of the plaintiffs other than

Because *Sperry* holds that mere economic loss is not sufficient to constitute a "physical taking", one of the last underpinnings of the *Hall* panel's rationale has been undermined.

7. The Third Circuit's Decision In *Pinewood* Is Also Flawed Because It Failed To Consider Binding And Relevant Authorities.

In *Pinewood Estates of Michigan v. Barnegat Township Leveling Board, supra,* the park owner sued in federal court[20] alleging that the rent leveling ordinance of the Township of Barnegat, New Jersey took their property by prohibiting them from increasing rents to a new mobilehome owner who bought the mobilehome, in place, from an existing resident. The District Court granted a Motion to Dismiss holding that the ordinance was a constitutional regulatory ordinance. 898 F.2d at 350.

On appeal, a Third Circuit panel reversed, holding that to the extent that the ordinance granted the homeowners a transferable possessory interest in the park owners

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the desire for greater profits). See also, *Manheim, supra,* 1989 Wisc L. Rev. at 964-969 (Questioning the *Hall* panel's conclusion that a right to raise rents on transfer is a discrete property interest).

[20]It is unclear whether or not the federal court had proper jurisdiction over the case. The Complaint apparently alleged a "taking", therefore, it should have been brought in state court, assuming that New Jersey has adequate procedures for such inverse condemnation cases. See generally, *Williamson County Regional Planning Comm'n. v. Hamilton Bank,* 473 U.S. 172, 196-197, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985).

See also, *Sinaloa Lake Owner's Ass'n. v. City of Simi Valley,* 882 F.2d 1398, 1402 (9th Cir. 1989), *cert. denied,* ____ U.S. ____, 110 S.Ct. 1317, 108 L.Ed.2d 493 (1990), explaining that it was proper for *Hall* to be brought in the federal courts because it was originally filed at a time, prior to *First English [First English Evangelical Lutheran Church v. County of Los Angeles,* 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987)], when California state courts would not award damages for ordinances which constituted a taking.

land, it constituted a "physical taking" under *Loretto, supra. Id.* at 353-354.[21] After opining that "vacancy decontrol" might solve the problem by permitting the park owner to raise rents to eliminate any "premium" *(Id.* at 353), the Court dismissed the argument that the park owners were being adequately compensated for their loss because the ordinance provided them with a "constitutionally adequate rent for the occupancy of the tenants as such." *Ibid.*

A careful analysis of *Pinewood* indicates that the Court apparently never considered a number of relevant decisions, e.g., *FCC, Pennell, Eamiello, Thompson, Sperry,* and *Oceanside, supra.*

Therefore, the *Pinewood* Court apparently never considered that, unlike *Loretto,* a mobilehome owner's right to occupy a mobilehome space is originally obtained "consensually" (*FCC, supra,* 480 U.S. at 252); that a park owner transfers his "possessory interest" in his land to the mobilehome owner in return for rents (*Eamiello, supra,* 546 A.2d at 818), and that since the state has created the site value through regulatory scarcity (e.g., zoning) it could constitutionally repose any sales premium in the homeowner rather than the park owner. *Eamiello, Id.* at 820.

They failed to consider that the only park owner's "property interest" frustrated by the ordinance was his desire for greater profits and that such an interest does not qualify for a physical taking. See, *Sperry, supra,* 110 S.Ct. at 395n.9.

The *Pinewood* panel's comments about the desirability of "vacancy decontrol" clearly indicated that they were unaware that "mobilehome owners are enclosed within a captive market" *(Oceanside, supra,* 157 Cal.App.3d at

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[21]The Court also noted that *Hall, supra,* had reached a similar conclusion. 898 F.2d at 353-354.

910); that "park owners have a monopoly," (*Eamiello, supra*, 546 A.2d at 819) and that "taken collectively the [mobile] homeowners have a greater investment than does the [mobile] home park owner", *Oceanside, supra*, 157 Cal.App.3d at 911n.9. The Court, therefore apparently never considered the public interest in protecting the mobilehome owner's investment. See, *Eamiello, supra*, 546 A.2d at 819; see also, *Palomar* Slip Op., Palomar's Petition at A19-A20n.6 (Vacancy control prevents a park owner from charging excessively high rents and thereby artificially deflating the price of the mobilehome).[22]

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[22]By requiring that space rent not be arbitrarily increased upon the sale of a home or occurrence of a space vacancy, the San Marcos Ordinance adds certainty to the mobilehome market, prevents abusive rents which result in a destruction of the equity that a homeowner has in his or her home, stabilizes rents among spaces in a park, and assures continuation of mobilehome living as a legitimate housing option.

The grim reality of what happens when arbitrary increases are made on transfer is only recently becoming public. On remand from the Ninth Circuit decision, the Halls were able to convince the trial court that there was a rent control sales premium and received a substantial damage award. Prior to appeal to the Ninth Circuit, the case settled when the City of Santa Barbara agreed to lift all restrictions on rent increases at the time of transfer. Almost immediately, Mrs. Hall informed certain park residents that she was going to raise rent on any transfer by $250 to $300 per month. As a result, homes which a few months before had been purchased for $80,000 became virtually unsalable.

For example, Mrs. Hall's attorney, Mr. Jagiello, has publicly stated: "... in the Hall park over the last two years, not one coach has sold, although many are for sale, but for the exception of a coach that sold two weeks ago for one dollar. There were attempts to give coaches away to charities and they wouldn't take them. There is no market for coaches in Santa Barbara." See, Administrative Record to *Palomar Estates East v. City of San Marcos*, San Diego Superior Court No. N48882, April 9, 1990 Hearing Transcript at 7.

It is clear that in the absence of vacancy control certain unscrupulous park owners will take much more than the so called "rent control

B. Every California Court Which Has Considered The Issue Has Rejected The *Hall* Rationale.

1. *Yee* Fully Considered *Hall* And Dismissed Similar Claims.

In *Yee v. City of Escondido, supra,* the Court considered an attack on the City of Escondido's Mobilehome Rent Protection Ordinance alleging that the Ordinance constituted a taking and a denial of substantive due process because it did not permit a park owner to automatically raise rents when a mobilehome was sold or transferred.

In affirming the trial court's order dismissing the action, the Court began by indicating that it was "revisit[ing] an issue of federal constitutional law we first considered several years ago in *Oceanside*. . . ." *Yee*, 224 Cal.App.3d at 1351. The Court then pointed out that:

> "[p]laintiffs' complaints never allege the Escondido ordinance is irrational because it denies them fair and reasonable rents. Indeed, the owners have never attempted to obtain Escondido's approval for what they consider to be a "fair" rent. In the absence of such a contention, we assume the rents provided for by the ordinance are fair. If they are, there is no "taking." The fact that used mobilehomes in Escondido are selling for more than they have in the past is irrelevant."

224 Cal.App.3d at 1354.

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premium" they will take "all the market can bear," that is all the homeowner's equity. Thus, a homeowner who in good faith invested in a home, recognizing the reality that the home could not be moved, under the *Hall* theory is faced with the prospect of losing the value of his or her investment or remaining a captive in the mobilehome park.

Unless homeowners and their lenders are assured that the value of a home will remain relatively stable, the mobilehome market will evaporate, investments will be lost, and a legitimate affordable housing option will be lost.

The Court then examined *Hall* and its legal underpinnings and concluded that *Hall* was "an interpretative misstep" (224 Cal.App.3d at 1351n.1),[23] had misapplied *Loretto, supra*, and was inconsistent with subsequent decisions of the United States Supreme Court including *FCC, supra*. *Yee*, 224 Cal.App.3d at 1354-1358.

The California Supreme Court denied hearing in *Yee* on January 24, 1991. See, 1991 Cal. LEXIS 353 (1991). The time for Yee to file its Petition for a Writ of Certiorari has been extended (per. J. O'Connor) to June 23, 1991.

2. *Casella* Rejected Virtually Identical Claims.

In *Casella v. City of Morgan Hill*, ____ Cal.App.3d ____, 280 Cal.Rptr. 876, 1991 Cal.App. LEXIS 473 (Cal.App., 6th Dist. No. H006972, May 10, 1991, certified for publication), the Court rejected a challenge to the City of Morgan Hill's mobilehome rent control ordinance claiming that its lack of a "vacancy decontrol" provision which allows rents to be increased when a mobilehome is transferred was a "taking." After carefully analyzing the *Hall* decision (*Casella*, Slip. Op. at 8-13), the Court concluded:

> We find *Hall* distinguishable in a way we think the Supreme Court would find material. (833 F.2d at p. 278) Like the California appellate district which has considered the issue before us (see *Yee v. City of Escondido* (1990) 224 Cal.App.3d 1349), we repudiate *Hall's* attempt to bootstrap a mobile home rent control ordinance — an economic regulation — to the Supreme Court's "very narrow" holding in *Loretto*.

Id. at 13.

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[23]Yee also concluded that Pinewood "suffers from a similar defect." 224 Cal.App.3d at 1356n.6.

The Court continued its analysis stating:

> As *Yee* and others have pointed out, the increase in the sales prices of mobile homes resulting from rent control may simply reflect the artificially low price caused by excessive rents charged prior to its enactment. The mere fact that increased coach prices are a corollary to rent control does not establish that a taking has occurred. . . .

Id. at 17.

Finally, the Court rejected Hall's analysis of substantive due process by concluding:

> The stated purpose of the city's ordinance is to control excessive rental prices for the largely fixed-income residents of mobile home parks. This is unquestionably a legitimate state interest. The City of Morgan Hill could reasonably have concluded that the mobile home rent control ordinance would promote this goal. Whether as a means to achieve its stated purpose rent control is a good idea is a political decision — one which properly rests with the legislative branch of government. We agree with *Yee* that this is "not a question of constitutional law for the courts."

(*Casella*, Slip Op. at 22-23).

C. In Any Event, The San Marcos Ordinance Is Distinguishable From That Considered In Hall.

The Santa Barbara Ordinance discussed in *Hall* put various restrictions on a park owner's right to terminate a mobilehome owner's space lease and required mobilehome park owners to offer leases of unlimited duration. See *Hall, supra*, 833 F.2d at 1273.

There are no similar restrictions in the San Marcos Ordinance. To the extent that the homeowner "tenants" are given the right to occupy and use the park that right

is granted not by the San Marcos Ordinance, but instead by state law. See, Mobilehome Residency Law, Cal. Civil Code, Sections 798.56, 798.74. This fact by itself is sufficient to distinguish *Hall.*

The Court of Appeal recognized this distinction and pointed out that on appeal Palomar was relying on the "combined effect of the rent control ordinance and the California Mobilehome Residency Law" . . . . "[but] is not challenging the constitutionality of the state law, asserting that even absent the state law, the local rent control ordinance would achieve a taking." *Palomar* Slip. Op., Palomar's Petition at A6-A7.

Later the Court explained:

> As we noted earlier, Palomar is *not* challenging the State law requirement that it accept the new purchasing tenant chosen by the selling tenant — thus this component of the regulatory scheme does not bring this case into the "permanent physical occupation" parameters of *Loretto.* As explained by Palomar, even if the landlord had exclusive power to chose [sic] the new tenant, under the local ordinance it still would be subject to the rent increase restrictions. Thus, it is not the physical occupation of the new tenant which is being challenged, but rather the challenge is to the limits on the rent increases and corresponding effect on the price of the selling tenant's coach. And, contrary to the analysis used in *Hall,* this is not a case which challenges the transfer of a possessory interest from landlord to tenant, since even if the landlord retained the right to choose the purchasing tenant, Palomar would still be complaining about the restriction on rent increases at vacancy and the corresponding increase in the value of the mobilehome sold by the departing tenant.

Id. at A16-A18.

Under the circumstances, the Court of Appeal correctly concluded that the Ordinance granted no "permanent physical occupation" within the meaning of *Loretto* (*Palomar* Slip. Op., Petition at A18-A19) and therefore *Hall* was also distinguishable on its facts.

II. THE COURT BELOW FULLY CONSIDERED AND CORRECTLY DECIDED THAT THE ORDINANCE ADVANCES A LEGITIMATE GOVERNMENTAL PURPOSE AND DOES NOT VIOLATE SUBSTANTIVE DUE PROCESS

Palomar also contended that the Ordinance violates substantive due process because its vacancy control provision[24] does not advance a legitimate governmental purpose.

The San Marcos rent control legislation expressly seeks to remedy an inequitable market situation caused by the scarcity of mobilehome spaces by protecting mobilehome owners from unreasonable space rental increases therefore protecting the homeowner's investments, while also providing park owners with a just and reasonable return on the park owner's investment. See, SMC, Section 16.16.010.

The Courts have found rent control legislation to be a reasonable and legitimate means of addressing problems related to scarcity in rental property and the high rents resulting from inequities in bargaining power. See, e.g., *Pennell, supra*, 485 U.S. at 13-14 (Court upheld rent control ordinance which required consideration of hardship to low income tenants of rent increase); see also, *Schnuck v. City of Santa Monica*, ____ F.2d ____, 1991 9th

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[24]Throughout its Petition Palomar often refers to the restrictions on its right to raise rents on transfer as a "vacancy control" provision. Although some courts have also used this terminology, it is a misnomer because since mobilehomes are almost always sold "in place", there is rarely a space "vacancy."

Cir. Slip. Op. 6877, 6885, 1991 U.S. App. LEXIS 11113 (9th Cir. No. 89-55283, June 4, 1991) (Court held City had a legitimate interest in imposing eviction controls as part of rent control ordinance to "protect tenants from the high cost of dislocation in the tight housing market, and prevent landlords from arbitrarily evicting tenants simply to obtain higher rents from new tenants.").

In *Oceanside, supra*, the homeowner's equity interest was interrelated with mobilehome rent control. There, the Court noted that "the ordinance recognizes not only the realities of a captive market, but also the proprietary interests mobilehome owners have individually and cumulatively in their homes and appurtenances." *Id.* at 910-911.[25]

In *Azul Pacifico v. City of Los Angeles*, 740 F.Supp. 772 (C.D. Cal. 1990), *on appeal*, 9th Cir. No. 90-55853, the District Court reached a similar conclusion. Although the Court considered itself bound by *Hall* to find a "taking" (*Id.* at 781), it nevertheless set forth its conclusion that a legitimate state interest justified the City's enactment of the Rent Stabilization Ordinance ("RSO") including the "vacancy control" provisions. *Id.* at 780. The Court noted:

> Based on testimony from mobile home tenants, the City found that, without vacancy control, it would be virtually impossible for tenants to sell their homes on the pad because landlords could raise the rents to a level that prospective buyers could not afford.

Ibid.

Pointing out that "the Supreme Court has long held that protection of consumer welfare is a legitimate and rational goal of price control" (*Ibid.*), and that rent

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[25]In an accompanying footnote, the Court noted that "the continuing possibility of unreasonable space rental increases in manufactured home parks threatens to diminish the value of the investment of the manufactured home owners." 157 Cal.App.3d at 911n.9.

control has long been held constitutional as "a legitimate exercise of the state's police power" (*Id.* at 781), the Court determined that "the mobile home market is an example of a monopoly, which is a market *failure*, rather than a market, and is a prime candidate for governmental regulation." *Ibid.*

The Court below properly ruled that the Ordinance advances a legitimate purpose and is not a violation of substantive due process.

CONCLUSION

To the extent that Palomar's Petition seeks to raise issues never presented below, i.e., whether the federal claim did not exist at the time the state court ruled (see, Palomar's Petition at 26-39), it should be summarily denied. See, e.g., *Cardinale v. Louisiana*, 394 U.S. 437, 438, 89 S.Ct. 1161, 22 L.Ed.2d 398 (1969) (Traditionally the Court refuses to "decide federal constitutional issues raised here for the first time on review of state court decisions").

Respondent City also respectfully submits that the Court should deny Palomar's Petition seeking review of the taking and due process decisions of the state court because it is clear that these decisions were properly made.

However, Respondent recognizes that this case raises an important issue of "taking jurisprudence", i.e., whether a "taking" exists in the context of the regulation of space rent to new residents in a mobilehome park.[26] Therefore in the alternative, Respondent City respectfully suggests that if this Court decides that the petition presents an important issue justifying a grant of certiorari, review should be limited to consideration of the taking issue. Further, Respondent respectfully suggests that a grant of certiorari and a decision summarily affirming the state court decision would remove the

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[26]Counsel for Respondent are aware that the issue of whether a mobilehome rent review ordinance which prevents or restricts rent increases on the sale of a mobilehome in place in a park is a "taking" is of major concern to many cities and other local governments, mobilehome park owners and mobilehome residents throughout California and perhaps the nation. For example, at its June 14, 1991 meeting the Legal Advocacy Committee of the League of California Cities voted to support the request by the City of San Marcos for a limited grant of certiorari to decide the taking issue, and further to support the City by means of an Amicus Brief if certiorari is granted.

"shadow" cast by *Hall* on mobilehome living as a legitimate affordable housing option and prevent further wasteful litigation on this issue.[27]

Dated: June , 1991

Respectfully submitted,

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[27]Palomar is but the first of a series of possible petitions based on the same fact pattern. Several other cases in which *Hall* type challenges have been raised to local mobilehome rent review ordinances are currently at some stage of the state (e.g., *Yee*, *Peppard*, *Casella*, *supra*) or federal (e.g., *Azul*, *supra*) appellate process and may ultimately reach this Court.

APPENDIX

Pertinent portions of San Marcos Municipal Code, Chapter 16.16:

Section 16.16.010. Findings.

Since the mid 1970's there has existed within the City of San Marcos and surrounding communities, a shortage of rental space for the location of mobilehomes. Due to the continuing shortage of available mobilehome rental spaces, there continues to be very low vacancy rates within mobilehome parks creating an inequitable market situation between mobilehome park owners and the tenants thereof. Prior to the enactment of regulations controlling space rent increase, space rents had been rising for several years and were being increased in amounts and at frequencies that caused serious concern, anguish, and stress among a substantial number of San Marcos residents living in mobilehome parks.

Finding alternative rental sites for the relocation of mobilehomes have been and continue to be difficult due to the shortage of vacant rental spaces, the restrictions on the age, size, or style of mobilehomes permitted in many mobilehome parks, and the requirements relating to the installation of mobilehomes, including permits, landscaping and site preparation. Additionally, the cost for moving a mobilehome is substantial and the risk of damage in moving is significant. The result of these conditions has been and continues to be the creation of the great imbalance in the bargaining position of the mobilehome park owners and mobilehome owners in favor of the mobilehome park owners pertaining to the establishment of space rents.

This Council finds and declares it necessary to facilitate and encourage fair bargaining between mobilehome owners and mobilehome park owners in order to achieve mutually satisfactory agreements regarding space rental

rates in mobilehome parks. Absent such agreements, this Council further finds and declares it necessary to protect the mobilehome owner and resident from unreasonable space rental increases while at the same time recognizing the need of mobilehome park owners to receive a just and reasonable return on their investments.

Section 16.16.055. Notice of Rent Increase.

A mobilehome park owner shall give written notice to the City of a proposed rent increase. The notice shall be given at the same time that the notice of rent increase is given to the tenants. The notice shall be filed with the City Clerk and shall contain the following information: the amount of the current space rents and the amount of separately billed fees or charges, if any; the amount of the proposed increase; the spaces to which the increase applies and the names of the tenants of those spaces; and the date of the last rent increase for the park.

Section 16.16.060. Initiation of Proceedings.

(a) Filing of petition. Tenants of a mobilehome park may initiate Commission review of a proposed space rent increase by filing with the City Clerk a written petition which complies with the requirements set forth in this subsection. The petition shall:

. . .

(3) Be signed by at least one (1) tenant from each of more than fifty percent (50%) of the mobilehome spaces within the park which would be subject to the space rent increase specified in the notice.

. . .

(d) Stay of Space Rent Increase. Unless the City Clerk rejects a petition . . . the filing of a petition pursuant to subsection (a) shall automatically stay the space rent increase subject to the petition until . . .

(2) The Commission makes a final decision regarding the space rent increase pursuant to Sec. 16.16.070.

Section 16.16.070. Commission Review.

(a) Upon receipt from the City Clerk of the petition, the Commission shall schedule a hearing thereon to be conducted no sooner than twenty (20) days and no later than forty (40) days from the date of the Commission's receipt of the petition at a place and time to be set by the Commission. The purpose of the hearing shall be to determine whether or not the rental increase is reasonable.

. . .

(g) The mobilehome park owner shall bear the burden of proving by a preponderance of the evidence that a proposed space rent increase is reasonable and is necessary to enable the mobilehome park owner to receive a just and reasonable return on his investment. . . .

Section 16.16.080. Annual Adjustments.

(a) Except for rental adjustments exempt from this Chapter . . . all space rents in a park shall be adjusted at the same time. A mobilehome park owner shall not increase or adjust space rents more than one time in any twelve consecutive month period.

ORDINANCE NO. 90-862

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA AMENDING TITLE 16, CHAPTER 16.16 OF THE SAN MARCOS MUNICIPAL CODE BY THE ADDITION OF SECTION 16.16.085(C) RELATING TO PERMISSIBLE RENTAL ADJUSTMENTS UPON THE OCCURRENCE OF A SPACE VACANCY

The City Council of the City of San Marcos, California does ordain as follows:

SECTION 1. The Title 16, Chapter 16.16 of the San Marcos Municipal Code is amended by the addition of Section 16.16.085(c) to read as follows:

(c) Establishment of space rent by a rental agreement other than a long term lease which establishes a tenancy exempt from the provisions of this chapter for a new tenant following a vacancy resulting from the sale of a mobilehome on a space subject to the following provisions:

(1) The amount of the space rent established for the new tenant shall not exceed the higher of either: (i) the amount of the preexisting space rent increased by the percentage change of the consumer price index applicable to San Diego County from the time period of the last space rent increase to the date of establishment of the new rent or 10% whichever is less; or (ii) the median rent level for comparable spaces within the park subject to this chapter increased by the percent of change of the consumer price index applicable to San Diego County from a date one year prior to the date of establishment of the new rent or 10% whichever is less.

(2) For the purposes of this subsection comparable spaces within each park shall be determined on an annual basis by the City Council taking into consideration such factors as: space location, size, shape and amenities; proximity of the space to a clubhouse or other recreational facility within the park; preexisting rent levels; and other relevant factors. Comparable spaces and the rent levels for those spaces shall be designated on a map approved by City Council resolution. The map of comparable spaces and showing comparable rents shall be posted in the office of the park manager and shall be available for inspection by residents and prospective residents of the park. The map designating comparable spaces and establishing comparable rent levels shall be updated on an annual basis.

(3) If a mobilehome park owner believes that the amount of the new rent established pursuant to the provisions of subparagraph (1) is less than the fair market rent for the mobilehome space, the mobilehome park owner may request that the fair market rent for the space be established by arbitration. A request for arbitration shall be filed with the City Clerk prior to the commencement of the new tenancy. The request for arbitration shall designate the space within the mobilehome park for which arbitration is requested and shall include the names, addresses, and telephone numbers of the existing tenant and of the prospective tenant. The City Clerk shall notify the existing and the prospective tenants of the request for arbitration by first class mail sent within three days of the date of the filing of the request. The arbitrator shall be selected by

the prospective tenant with the consent of the mobilehome park owner from a list of impartial arbitrators approved by the City Council and kept on file in the office of the City Clerk. The decision of the arbitrator shall be limited to the establishment of the fair market rent applicable to the space. Fair market rent is that rent which would be paid for the mobilehome space in the City assuming normal market equilibrium between the supply of mobilehome spaces in the City and the demand therefor, and without the exercise by the park owner of an unfair bargaining position resulting from the factors which the council found necessitated the adoption of this Chapter. The park owner shall have the burden of going forward with the evidence, but neither side shall have the burden of proof on the issue of fair market rent. The matter shall be heard by the arbitrator and a written decision on the matter rendered within 60 days from the date the request for arbitration is filed. The decision of the arbitrator shall be final subject to review by writ of administrative mandamus. The petition for writ of administrative mandamus may be filed by the park owner, the existing tenant, the prospective tenant, or by the City upon order of the City Council. The cost of the arbitrator shall be borne by the park owner. Each participant in the arbitration shall bear their own costs and expenses of the arbitration.

(4) A mobilehome park owner shall be entitled to only one rent increase per space per year under the provisions of this subsection.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk shall cause this Ordinance to be published in a newspaper of general circulation in the City pursuant to the provisions of Government Code Section 36933.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of San Marcos, California held on the 11th of September, 1990, and thereafter;

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos, California, held on the 25th day of September, 1990, by the following vote:

AYES: LOSCHER,PRESTON,SMITH,THIBADEAU

NOES: NONE

ABSTAIN: NONE

ABSENT: HARRIS

/s/ LEE B. THIBADEAU
Lee B. Thibadeau, Mayor

ATTEST:

/s/ SHEILA KENNEDY
Sheila Kennedy,
City Clerk

APPROVED AS TO FORM:

/s/ DANIEL S. HENTSCHKE
Daniel S. Hentschke,
City Attorney